IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.MC.No. 2349 of 2007()

CRIME NO.184/2007 OF PATHANAPURAM POLICE STATION

PETITIONER: ACCUSED

SALIM A, S/O. ABDUL KHADER RAWTHER,
KAVUVILAPURAYIDATHIL HOUSE, KUNDAYAM PO,
PATHANAPURAM.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. OMANA,D/O. KURUMBI,
ATTA PUTHOORKIZHEKKEKARA HOUSE,
KUNDAYAM MURI,PATHANAPURAM, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2349 of 2007

Dated this the 23rd day of July, 2007

O R D E R

The petitioner faces allegations in a crime registered, inter alia, under Sections 324 and 294 (b) I.P.C. In the course of investigation, the Investigator has filed a report to include the allegation under Section 3(1)(xi) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The petitioner claims to be aggrieved by the said report including the allegations under Section 3(1)(xi) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. In the course of discussions at the Bar, the learned counsel for the petitioner submits that the petitioner shall be satisfied if directions under Section 438 Cr.P.C were issued in favour of the petitioner. Such a direction cannot obviously be issued in the light of Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. It is for the petitioner to appear before the learned Magistrate and seek appropriate orders regarding bail. All other offences are bailable.

2. The mere fact is that the offence under Section 3(1)(xi) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act triable by the Special/Sessions Court does not divest the Magistrate of the jurisdiction to grant bail under Section 437 Cr.P.C. The position

has been made clear and repeated in **Ali v. State of Kerala** [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250].

3. I am of opinion that it is for the petitioner to appear before the learned Magistrate and seek regular bail. The learned Magistrate must consider the bail application in the light of the decisions referred above and pass appropriate orders expeditiously. If such application is filed after giving sufficient prior notice to the prosecutor in charge of the case, the learned Magistrate must proceed to dispose of the application on the date of surrender itself. In the peculiar facts and circumstances of this case, I direct that the petitioner shall not be arrested on or before 31.07.2007, before which date the petitioner must appear before the learned Magistrate and seek bail.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-